No. _____

In the Supreme Court of the United States

SAHA THAI STEEL PIPE PUBLIC COMPANY LIMITED,

Petitioner,

v.

WHEATLAND TUBE COMPANY,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Under 19 U.S.C. 1673, Congress directed two agencies, the Department of Commerce ("Commerce") and the International Trade Commission (the "Commission" or "ITC"), to make two distinct determinations before imposing certain duties on foreign goods. First, Commerce determines whether a class of merchandise is being sold in the United States for less than fair value (known as "dumping"). Second, the "Commission determines" whether a domestic industry has been materially injured, or is threatened with material injury, by "that merchandise." If both agencies answer yes, then antidumping duties may be imposed on "such merchandise." Commerce may later issue a "scope ruling" clarifying whether a particular product falls within the scope of an antidumping duty order. Here, in reviewing a scope ruling, the court below deferred to Commerce on whether the Commission had made a material injury determination for the merchandise at issue, rather than applying its own judgment to decide that legal question. While a petition for rehearing was pending, this Court decided *Loper Bright Enters.* v. *Raimondo*, 144 S. Ct. 2261 (2024). The questions presented are:

1. Did the court below err by deferring to Commerce, rather than ascertaining for itself, whether the Commission had made the requisite material injury determination?

2. May Commerce use scope rulings to assess antidumping duties on merchandise for which the Commission did not investigate material injury?

PARTIES TO THE PROCEEDING

Petitioner Saha Thai Steel Pipe Public Company Limited ("Saha Thai") was the plaintiff in the U.S. Court of International Trade and the appellee below.

Respondent Wheatland Tube Company ("Wheatland") was the defendant-intervenor in the U.S. Court of International Trade and the appellant below.

The United States was the defendant in the Court of International Trade, but did not appeal the decision of the U.S. Court of International Trade or otherwise appear in the court below.

RULE 29.6 DISCLOSURE STATEMENT

Saha Thai states that it is a publicly traded company, listed on the Stock Exchange of Thailand, and none of its shareholders own 10 percent or more of its stock.

RELATED PROCEEDINGS

The proceedings directly related to this petition are:

Saha Thai Steel Pipe Pub. Co. v. *United States*, No. 2022-2181, 101 F.4th 1310 (Fed. Cir. 2024).

Saha Thai Steel Pipe Pub. Co., Ltd. v. *United States*, No. 1:20-cv-133, 592 F. Supp. 3d 1299 (Ct. Int'l Trade 2022).

Saha Thai Steel Pipe Pub. Co. v. *United States*, No. 1:20-cv-133, 547 F. Supp. 3d 1278 (Ct. Int'l Trade 2021).

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PETITION FOR A WRIT OF CERTIORARI

Saha Thai respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit.

INTRODUCTION

Over a forceful dissent, the majority below erroneously resolved a trade law question with significant legal and practical consequences on international trade and administrative law more generally. Under 19 U.S.C. 1673, Commerce may only impose antidumping duties on imports of foreign merchandise "if" Commerce determines that this merchandise is being sold in the United States for less than fair value "and" the International Trade "Commission determines" that a domestic industry is materially injured, or threatened with material injury, by imports of "that merchandise" (collectively referred to as "material injury"). 19 U.S.C. 1673(2); see also 19 U.S.C. 1677(2).

When Congress designs a statutory framework that makes an executive agency's power to act dependent on a distinct determination by an independent agency, the executive agency (here, Commerce) should not be free to exercise its authority in a manner that infringes the authority delegated by Congress to the independent agency (here, the Commission). And, to avoid that outcome, courts should independently ascertain whether each agency has made the distinct determination assigned to it by Congress, rather than simply defer to the executive

agency's views, consistent with this Court's recent decision in *Loper Bright Enters.* v. *Raimondo*, 144 S. Ct. 2244 (2024).

Yet, the majority below condoned this sort of agency overreach by allowing Commerce to impose antidumping duties on foreign merchandise based on Commerce's supposedly reasonably interpretation of the Commission's determination under section 1673. In doing so, the majority below created a gaping loophole in Congress' dual-agency statutory framework that sidelines the Commission's independent role in evaluating material injury. Because trade law questions fall within the Federal Circuit's exclusive nationwide jurisdiction, this case presents the best, and only, vehicle for this Court to correct this significant legal error and bring the Federal Circuit back in line with broader administrative law principles.

The parties' specific dispute centers on whether Commerce's decision to impose antidumping duties on certain circular welded steel pipes from Thailand complies with section 1673's material injury requirement. In 1985, Commerce issued an antidumping duty order regarding imports of certain steel pipes from Thailand that meet basic specifications, "commonly referred to in the industry as 'standard pipe'" (the "Thailand Order"). In its initial investigation, the Commission only evaluated the impact of importing standard pipes on the domestic industry. It did not investigate or evaluate the impact of importing pipes manufactured to meet a different set of stricter specifications, *i.e.*, "line pipe,"

because the domestic producers who sought the investigation excluded line pipes from the scope of their petition.

Since pipe specifications sometimes overlap, a pipe may be stamped as both line pipe and standard pipe, commonly referred to as "dual-stenciled" pipe. Both the Commission and Commerce have recognized that dual-stenciled line pipe is different from mono-stenciled standard pipe, and nothing in the record suggests that dual-stenciled line pipe is ever commonly referred to in the industry as standard pipe. Indeed, doing so would make no sense; it would be like referring to a two-quart measuring cup as a one-quart measuring cup simply because it can also measure one quart.

In 2019, rather than initiate a new investigation into whether dual-stenciled line pipes were being dumped and were causing material injury to a domestic industry under section 1673, domestic producers asked Commerce to issue a "scope ruling" to clarify whether the Thailand Order covered dual-stenciled line pipes. 19 C.F.R. 351.225(a). Commerce concluded that it did, notwithstanding that the Commission had never made an express material injury determination for mono- or dual-stenciled line pipes from Thailand, and in subsequent statutorily mandated reviews of the Thailand Order the Commission had stated that dual-stenciled line pipes were excluded from the Order.

Commerce's scope ruling, and the majority below's review of that ruling, cannot be squared with section

1673's material injury requirement. Indeed, the U.S. Court of International Trade agreed with Saha Thai that Commerce's scope ruling was unlawful because it was not supported by a material injury determination for dual-stenciled line pipes. And the dissenting judge below would have affirmed the Court of International Trade's decision.

In reaching a contrary conclusion, the majority below deferred to Commerce's interpretation of the Thailand Order and the Commission's underlying material injury determination. But Commerce may not act beyond the authority granted to it by Congress, and Congress made clear that the "Commission determines" material injury, not Commerce. So, the court below should have independently determined for itself, without leaning on Commerce's analysis, whether the Commission had made the requisite material injury determination for dual-stenciled line pipes under section 1673 (as the Court of International Trade and the dissenting judge did). As this Court recently confirmed in *Loper Bright*, courts must apply their own judgment in resolving all questions of law arising from any agency action. By simply deferring to Commerce's interpretation of the Order, without looking directly to whether the material injury requirement was met, the majority in effect allowed Commerce (an executive agency) to displace the authority delegated by Congress to the Commission (an independent agency)—disrupting Congress' dual-agency statutory design.

The consequences of this error go beyond international trade in pipes. It could embolden

Commerce to impose antidumping duties via scope rulings on a variety of goods for which the Commission has never made a material injury determination, undermining the United States' international trade obligations and creating bad precedent for other dual-agency frameworks.

This Court's review is needed.

OPINIONS BELOW

The Federal Circuit's opinion is reported at 101 F.4th 1310 and reprinted in the Appendix (App.) at 1a-64a. The underlying decisions of the U.S. Court of International Trade (App. 69a-146a) are published at 547 F. Supp. 3d 1278 and 592 F. Supp. 3d 1299.

JURISDICTION OF THIS COURT

The Federal Circuit issued its opinion and entered judgment on May 15, 2024. It accepted Saha Thai's petition for rehearing as filed on June 21, 2024, App. 65a, and denied rehearing on July 24, 2024, App. 67a. On October 1, 2024, the Chief Justice granted Saha Thai's application for an extension of time to file a petition for certiorari until December 21, 2024. This Court has jurisdiction under 28 U.S.C. 1254(1).

RELEVANT STATUTORY PROVISIONS

This case involves provisions of the Tariff Act of 1930, 19 U.S.C. 1516a, 1673, and related regulations, 19 C.F.R. 351.225, as well as provisions of the Administrative Procedure Act (APA), 5 U.S.C. 706.

The relevant portions of these provisions are reproduced at App. 147a-155a.

STATEMENT

A. Legal Framework

1. Section 731 of the Tariff Act of 1930, as currently codified at 19 U.S.C. 1673, sets forth the general framework for imposing antidumping duties on foreign goods in the United States. Section 1673 balances free trade and fair competition by limiting the imposition of antidumping duties to imported goods that are both (i) sold at less than fair market value and (ii) injure or threaten to injure a domestic industry.

Congress divided these distinct determinations between two separate agencies: Commerce, an executive agency, and the Commission, an independent agency. First, Commerce (the "administering authority") determines whether "a class or kind of foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value." 19 U.S.C. 1673(1); 19 U.S.C. 1677(1) (defining the "administering authority" as the Secretary of Commerce). Second, as relevant here, the "Commission determines" whether a domestic industry is materially injured, or threatened with material injury, by reason of "that merchandise." 19 U.S.C. 1673(2); 19 U.S.C. 1677(2) (defining the "Commission" as the U.S. International Trade Commission). Only "if" Commerce "and" the Commission each reaches an affirmative

determination for their respective inquiries shall Commerce impose duties on "such merchandise." 19 U.S.C. 1673.

2. While each antidumping duty order contains a detailed description of the specific merchandise at issue, in practice, variations in merchandise means that questions may arise as to whether a certain product falls with the scope of an existing antidumping duty order. Thus, interested parties may request Commerce to issue a "scope ruling" to clarify whether a particular product falls within the scope of an existing antidumping duty order. 19 C.F.R. 351.225(a).

In addition, the Uruguay Round Agreements Act, approved in late 1994, amended the antidumping duty laws to require Commerce and the Commission to conduct periodic reviews of existing antidumping duty orders to determine whether the order should remain in place (known as "sunset reviews"). 19 U.S.C. 1675(c). Each agency reviews the task initially entrusted to it by Congress under section 1673: Commerce evaluates whether revoking the order would likely result in continued or recurring dumping, and the Commission evaluates whether the merchandise subject to antidumping duties continues to cause or threatens to cause material injury to a domestic industry. See 19 U.S.C. 1675a.

3. The material injury requirement in section 1673 conforms with the United States' international treaty obligations, namely the World Trade Organization's Agreement on Implementation of Article VI of the

General Agreement on Tariffs and Trade 1994, 15 April 1994, 1868 U.N.T.S. 201 (the "Antidumping Agreement"), which is the successor to the General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194 ("GATT"). GATT was originally signed in 1947 by twenty-three nations, including the United States. To achieve GATT's various objectives, such as "raising standards of living" and "expanding the production and exchange of goods," contracting parties set out to enter "into reciprocal and mutually advantageous arrangements directed at the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce." GATT, Preamble.

In its original form, GATT prohibited a contracting party from levying antidumping duties on any product imported from another contracting party "unless [the importing contracting party] determines that the effect of the dumping or subsidization, as the case may be, is such as to cause or threaten material injury to an established domestic industry . . . ." *Id.* at Art. VI(6)(a).

When the WTO was formed in 1995, the material injury requirement of the 1947 GATT remained substantially identical, providing that "[i]t must be demonstrated that the dumped imports are, through the effects of dumping, . . . causing injury within the meaning of this Agreement." Antidumping Agreement, Art. 3.5. It also requires state parties to demonstrate "a causal link between the dumped imports and the alleged injury." *Id.* at Art. 5.2.

B. The Initial Antidumping Investigation

1. Steel pipes may be classified based on various characteristics. This case concerns a distinction between "standard pipe" and "line pipe." Standard pipe is manufactured to American Society of Testing and Materials (ASTM) specifications, and line pipe is manufactured to American Petroleum Institute (API) specifications. App. 6a. Standard pipe and line pipe overlap in some general respects such as size, method of manufacture, materials, shape, dimensions, and other characteristics, but also differ in key respects, particularly the weld strength for different end use. Standard pipe is generally used for low-pressure conveyance of water, steam, air, or natural gas in plumbing, air-conditioning, automatic sprinklers and similar systems, while line pipe is generally used for the higher pressure transportation of gas, oil, or water in utility pipeline distribution systems. App. 10a n.6.

Critical to this case, a pipe may meet both the basic ASTM specifications and the more demanding API specifications, a combination that is commonly known as "dual-stenciled" pipe. App. 15a. Pipe that is dual-stenciled may meet the physical specifications in the ASTM for standard pipe, but by the very fact that it is dual-stenciled it must also meet the stricter API specifications for line pipe.

In 1985, a group of U.S. producers, including respondent Wheatland, filed a petition requesting an antidumping investigation of certain steel pipes imported from Thailand, from various manufacturers, including Saha Thai, as well as of certain steel pipes

imported from Turkey. App. 5a. The domestic producers' petition described the subject merchandise in detail. They sought an investigation into the domestic market impact of both standard pipe and line pipe. App. 7a. Later, however, the domestic producers amended the petition concerning Thailand to exclude line pipe, *i.e.*, pipes meeting the more demanding API specifications, since at the time no Thai company was licensed to produce line pipe. App. 7a-8a.

At the time of the petition, the 1985 tariff schedule required that *any* pipe meeting API specifications for line pipe of the relevant sizes be imported under tariff code 610.3208 or 610.3209, while standard pipe was imported under a series of different codes. Put differently, dual-stenciled line pipes could not be imported using tariff codes for standard pipe.

In April 1985, the Commission released a preliminary report in which it found a reasonable indication that the standard pipe industry was threatened to be materially injured by reason of imports of "standard pipes" from Thailand. App. 9a. The Commission described at length the differences between standard and line pipes but addressed material injury caused only by standard pipe—not by mono- or dual-stenciled line pipe—from Thailand. *Ibid*. Based on the Commission's preliminary report, Commerce issued its final determination that "standard pipe" from Thailand was being, or was likely to be, sold in the United States at less than fair value. App. 8a-9a.

In February 1986, the Commission issued its final determination regarding the material injury to the domestic industry from the importation of circular welded steel pipe from Thailand and Turkey. Throughout its analysis, the Commission treated standard and line pipes as different. It separately evaluated the effects of line pipe and standard pipe from Turkey, and evaluated only the effects of standard pipe from Thailand. App. 9a-10a, 73a-74a. Following Commerce's and the Commission's final determinations, Commerce issued its final antidumping order for "standard pipe" from Thailand (the Thailand Order). App. 12a. The Thailand Order was later updated to align with the 1989 tariff schedule, and was amended to say that the products covered by the order "are commonly referred to in the industry as 'standard pipe' . . . ." *Ibid.*

After the Thailand Order, domestic producers initiated antidumping investigations against similar pipes from other countries. App. 49a. In each of these subsequent investigations, the domestic producers explicitly agreed to exclude not only line pipe, but also dual-stenciled line pipe, from their petitions. *Ibid.* Accordingly, the antidumping orders resulting from these later investigations explicitly excluded both "line pipe" and "dual-stenciled pipe." App. 61a-62a.

2. To date, the Commission has conducted four sunset reviews of antidumping duty orders regarding circular welded steel pipes, including the Thailand Order. See, *e.g.*, App. 59a-63a. Each sunset review addressed all the orders together. When the Commission discussed the orders that excluded dual-

stenciled line pipes, it never called out the Thailand Order as being any different. App. 62a-63a. In its third sunset review, the Commission stated that "dual-stenciled pipe, which for U.S. customs purposes enters as line pipe under a different tariff subheading, is not within the scope of the orders," without carving out the Thailand Order. App. 62a. Similarly, in its latest sunset review, which occurred in January 2018, the Commission stated that "[d]ual-stenciled pipe, which enters as line pipe" under different tariff codes, "is not within the scope of the orders," again without qualification. App. 97a.

For decades after the Thailand Order was issued, Commerce consistently treated dual-stenciled line pipes as different from standard pipes. In subsequent cases regarding circular welded steel pipe, Commerce only included line pipe and dual-stenciled line pipe within the scope of the antidumping duty order if the original petition itself sought to include both. App. 141a-143a. Domestic producers never resubmitted their request for the Commission to investigate whether mono- or dual-stenciled line pipes from Thailand were causing or threatening to cause material injury under section 1673.

C. The Instant Scope Ruling Proceeding

1. In January 2019, Wheatland, along with other domestic producers, filed a petition with Commerce seeking a scope ruling against Saha Thai for allegedly circumventing antidumping duties under the Thailand Order. The domestic producers' request focused on dual-stenciled line pipes. App. 14a.

While acknowledging that the Commission's "investigations were limited to standard pipes," Commerce concluded that dual-stenciled line pipes were covered by the Thailand Order. App. 17a. It reasoned that dual-stenciled pipe met the basic specifications for standard pipe and found it relevant that the Commission had not *explicitly* excluded dual-stenciled pipe from its original injury determination for standard pipe from Thailand. App. 17a-18a. Commerce considered the Commission's sunset reviews, and concluded that they did not apply equally to all antidumping duty orders on the view that each antidumping duty order stands alone. App. 18a-19a.

2. Saha Thai appealed to the Court of International Trade. Saha Thai challenged the scope ruling as being "unsupported by substantial evidence" or otherwise "not in accordance with law." App. 121a (quoting 19 U.S.C. 1516a(b)(1)(B)(i)). The Court of International Trade found no support for Commerce's interpretation of the Commission's material injury determination. App. 128a, 144a. Instead, it found that the Commission had "made no injury determination as to dual-stenciled or mono-stenciled line pipe from Thailand," and that therefore antidumping duties "could not be imposed on those types of pipes when imported from Thailand." App. 128a. The court thus concluded that the Thailand Order could not cover dual-stenciled line pipe as a matter of law, observing that a "fundamental requirement of both U.S. and international law is that an antidumping duty order must be supported by an ITC determination of

material injury covering the merchandise in question." App. 124a.

On remand, under protest, Commerce found that dual-stenciled line pipes imported by Saha Thai were outside the scope of the Thailand Order. The Court of International Trade upheld Commerce's remand determination. App. 99a.

3. Wheatland appealed to the Federal Circuit, arguing that Commerce's initial scope ruling was correct. Two judges on the panel agreed. The majority focused on whether Commerce's scope ruling was reasonable, stating that courts generally grant "deference to Commerce's own interpretation of its antidumping duty orders." App. 24a. The majority viewed the Commission's original material injury investigation and determination through the lens of Commerce's scope analysis, without determining for itself whether the Commission had made a material injury determination for dual-stenciled line pipes. See App. 25a-31a.

Judge Chen dissented. Unlike the majority, he looked directly to the Commission's original injury investigation, determination and sunset reviews to assess whether Commerce's scope ruling complied with section 1673's requirements. In his view, the Commission "exclusively evaluated injury resulting from standard pipe and did not evaluate injury from . . . dual-stenciled pipe" in its initial investigation. App. 58a. Furthermore, the Commission's "direct statements" in its sunset reviews of the Thailand Order could only support the conclusion that "the

Thailand Order excludes dual-stenciled pipes." App. 58a-59a, 63a-64a. Thus, Judge Chen would have affirmed the Court of International Trade.

While Saha Thai's petition for rehearing was pending, this Court decided *Loper Bright Enters.* v. *Raimondo*, which overruled *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), and clarified that courts must apply "their own judgment," rather than defer to agencies, on "all relevant questions of law." 144 S. Ct. 2244, 2261 (2024). The Federal Circuit denied rehearing.

REASONS FOR GRANTING THE PETITION

I. Review Is Necessary to Settle an Important Trade Law Question that the Federal Circuit Got Wrong

Rather than applying its own judgment as to whether the Commission had made the requisite material injury determination under section 1673, the majority below improperly deferred to Commerce on that question of law. As a result, the majority upheld a scope ruling that is not in accordance with section 1673, opening a back door for Commerce to impose antidumping duties on merchandise for which the Commission has never investigated or evaluated material injury. Doing so broke new ground and deviated from broader administrative law principles, including this Court's recent decision in *Loper Bright*.

Because the Federal Circuit has exclusive nationwide jurisdiction over certain matters, such as

international trade and patent law, 28 U.S.C. 1295, this Court routinely reviews Federal Circuit decisions to correct significant legal errors and ensure consistency with this Court's precedents. See, *e.g.*, *United States* v. *Eurodif S.A.*, 555 U.S. 305, 316, 322 (2009) (reversing Federal Circuit's decision to exclude certain transactions from the term "merchandise" under section 1673); *United States* v. *Mead Corp.*, 533 U.S. 218, 221 (2001) (vacating Federal Circuit's decision and remanding for lower courts to review U.S. Custom Service's tariff classification rulings under proper level of deference); *United States* v. *Haggar Apparel Co.*, 526 U.S. 380, 383 (1999) (similar); see also *Microsoft Corp.* v. *i4i Ltd. P'ship*, 564 U.S. 91 (2011) (reviewing Federal Circuit's decision on proper burden of proof for an invalidity defense under section 282 of the Patent Act); *Quanta Computer, Inc.* v. *LG Elecs., Inc.*, 553 U.S. 617, 621 (2008) (reviewing Federal Circuit's application of the exhaustion doctrine to the sale of certain patented systems). Similarly, here, for the reasons set forth below, this Court should grant the petition and correct the Federal Circuit's erroneous decision.

A. The Majority Erred by Deferring to Commerce on Whether the Commission Made the Requisite Material Injury Determination

In holding that dual-stenciled line pipes were covered by the Thailand Order, the majority below deferred to Commerce's interpretation of whether the Commission had made a material injury determination for that merchandise. But under

section 1673, the "Commission determines" material injury, 19 U.S.C. 1673(2), not Commerce, and thus any deference to Commerce on that question was unwarranted. Rather, the majority was required to determine for itself whether the Commission had made the requisite material injury determination under section 1673.

1. Section 1673 requires two distinct determinations: Commerce determines whether a class or kind of merchandise is being sold for less than fair value in the United States, and the Commission determines whether a domestic industry is materially injured, or threated with material injury, by "that merchandise." 19 U.S.C. 1673. As a matter of law, both requirements must be met before Commerce may impose antidumping duties on "such merchandise." *Ibid*; *Wheatland Tube Co.* v. *United States*, 161 F.3d 1365, 1371 (Fed. Cir. 1998).

Commerce has promulgated regulations that allow it to review the scope of an existing antidumping duty order so as to clarify whether a particular product "is covered by the scope of an order." 19 C.F.R. 351.225. While this authority affords Commerce "substantial freedom to interpret and clarify its antidumping duty orders," Commerce cannot give itself more authority than Congress delegated to it. *Loper Bright*, 144 S. Ct. at 2273; *American Power & Light Co.* v. *SEC*, 329 U.S. 90, 105 (1946); *Federal Maritime Com.* v. *Seatrain Lines, Inc.*, 411 U.S. 726, 746 (1973); *La. Pub. Serv. Com.* v. *FCC*, 476 U.S. 355, 374-75 (1986); *New York* v. *FERC*, 122 S. Ct. 1012, 1023 (2002); *FEC* v. *Ted Cruz for Senate*, 535 U.S. 1, 4 (2022). Congress has

never authorized Commerce to interpret an antidumping duty order in a manner that displaces the Commission's role in determining material injury. Nor may Commerce's regulations be applied in a manner that exceeds its statutory authority. See *Haggar*, 526 U.S. at 392 ("In the process of considering a regulation in relation to specific factual situations, a court may conclude the regulation is inconsistent with the statutory language or is an unreasonable implementation of it. In those instances, the regulation will not control.").

A scope ruling may be challenged as being "unsupported by substantial evidence" or otherwise "not in accordance with law." 19 U.S.C. 1516a(b)(1)(B)(i). The APA draws the same distinction for reviewing agency decisions generally. 5 U.S.C. 706(2)(A), (E). In *Loper Bright*, this Court reiterated the "elemental proposition" that "courts decide legal questions by applying their own judgment." 144 S. Ct. at 2261. It distinguished legal questions from "agency policymaking and factfinding," which are subject to the more deferential "substantial evidence" standard. This Court thus confirmed that "'the reviewing court'—not the agency whose action it reviews—is to 'decide all relevant questions of law'," *id.* at 2265 (citations omitted), and that "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority," *id.* at 2273. Put simply, there is "no deferential standard for courts to employ in answering legal questions." *Id.* at 2261.

Whether the Commission made a material injury determination for dual-stenciled line pipes as required under section 1673 is a question of law. See, *e.g.*, *Guerrerro-Lasprilla* v. *Barr*, 589 U.S. 221, 227-28 (2020) ("[Questions of law] can reasonably encompass questions about whether settled facts satisfy a legal standard."). Thus, in determining whether a scope ruling comports with section 1673's requirements, meaning whether it is "in accordance with law," deference to Commerce is unwarranted.

2. In upholding Commerce's initial scope ruling, the majority observed: "[W]e accord deference to Commerce's own interpretation of its antidumping duty orders." App. 24a. It faulted the Court of International Trade for supposedly "fail[ing] to give sufficient deference to Commerce under the substantial evidence standard of review.'" App. 45a. The majority thus concluded that "Commerce reasonably read the scope language to cover standard pipes that are dually stenciled as line pipes." App. 37a.

The majority below reviewed the administrative documents produced during the agency process that led to the antidumping duty order (known as "(k)(1) materials" because they are listed under 19 C.F.R. 351.225(k)(1)). But rather than apply its own judgment to ascertain whether the Commission had made the statutorily mandated material injury determination, the majority concluded that the record "support[ed] Commerce's Scope Ruling determination and not Saha's proposed exclusion" of dual-stenciled line pipes. App. 38a. It observed: "Even if two inconsistent yet reasonable conclusions could have

been drawn from the record, the Court of International Trade cannot substitute its own judgment for that of Commerce." App. 45a.

The majority got it backwards. It is Commerce who may not substitute the Commission's judgment for its own, because under section 1673 the "Commission determines" material injury, not Commerce. Moreover, whether the Commission made the requisite material injury determination for dual-stenciled line pipe is a question of law under section 1673. Thus, the majority should have applied its own judgment to determine for itself whether Commerce's scope ruling complied with section 1673's material injury requirement, without deferring to Commerce. As the dissent observed, while Commerce is afforded "substantial deference" regarding interpretation of antidumping duty orders, such "deferential review is tempered by the fact that the question of whether the unambiguous terms of a scope control the inquiry, or whether some ambiguity exists, is a question of law that courts must review de novo." App. 52a (citing *Meridian Prods., LLC* v. *United States,* 890 F.3d 1272, 1277 (Fed. Cir. 2018)).

Furthermore, whatever deference Commerce may be entitled to when interpreting its own regulations, any deference owed to Commerce cannot override the authority that has been statutorily vested by Congress in the Commission. See *Loper Bright*, 144 S. Ct. at 2273 ("[W]hen a particular statute delegates authority to an agency consistent with constitutional limits, courts must respect the delegation, while ensuring that the agency acts within it.").

In order to give effect to the express statutory allocation of powers among the two agencies, courts reviewing a scope ruling should not defer to Commerce as to whether the Commission made the requisite material injury determination for the merchandise at issue. If anything, courts should prioritize what the Commission said about its own material injury investigation and evaluation. That is what the dissent and the Court of International Trade did. As a consequence, they correctly determined that the Thailand Order was not supported by the requisite material injury determination because, as Saha Thai had argued, the scope language and the administrative record could only be read to mean that the Commission had not evaluated material injury for dual-stenciled line pipes from Thailand. App. 59a, 99a, 138a-139a. At minimum, it is undisputed that the Commission did not evaluate the impact of mono-stenciled line pipe and it is far from clear that the Commission believed that it was evaluating the impact of dual-stenciled line pipe. Domestic producers should thus be required to renew their petition for a material injury investigation for all line pipe to ensure compliance with section 1673's dual requirements. By deferring to Commerce's interpretation of the Thailand Order with respect to whether the Commission had made the requisite material injury determination, the majority in essence gave Commerce more power to impose antidumping duties than Congress did.

This Court has reviewed Federal Circuit decisions in the past to ensure they are in line with broader

administrative law principles. For example, in *Haggar* and *Mead*, this Court considered whether certain agency actions were owed deference under *Chevron* or some other standard. *Haggar*, 526 U.S. at 383; *Mead*, 533 U.S. at 226. In *Haggar*, the Federal Circuit ruled that U.S. Customs Service regulations were not entitled to *Chevron* deference. This Court reversed and held that *Chevron* applied to the extent the regulations were interpreting ambiguous statutes. *Haggar*, 526 U.S. at 391-92. Following *Haggar,* the Court in *Mead* clarified "the limits of *Chevron* deference" in reviewing tariff classification rulings. *Mead*, 533 U.S. at 226.

Now that *Chevron* has been overturned by *Loper Bright,* this case presents an ideal vehicle to ensure that the Federal Circuit is not unduly deferring to Commerce when deciding whether a scope ruling complies with section 1673's material injury requirement.

3. The Federal Circuit's error in deferring to Commerce is further amplified by Congress' decision to delegate the material injury determination to the Commission—a separate, independent agency. As an executive agency, Commerce is more sensitive to political headwinds. See, *e.g.*, *Humphrey's Ex'r* v. *United States*, 295 U.S. 602, 624 (1935). By contrast, as an independent agency, the Commission is not directly subordinate to the President, and is thus more insulated from shifting political winds. See *ibid.* ("The [Federal Trade Commission] is to be non-partisan; and it must, from the very nature of its duties, act with entire impartiality. It is charged with

the enforcement of no policy except the policy of the law.").

The allocation of authority between these two distinct agencies was intentional. Congress created the Commission's predecessor (known as the United States Tariff Commission, or "USTC") in 1916, amid bipartisan support for an independent agency to oversee tariff policy. The USTC was intended to serve as an advisory agency that would conduct research and investigations into various trade issues without being swayed by politics. See Daniel J. Lass, *Loss of Independence? The Future of the International Trade Commission, Partisan Balance, and their Relationship with the President*, 14 AM. U. INTELL. PROP. 23, at 27-28 ("Progressives favored changes that could reduce high customs duties while conservatives wanted insulation from accusations of favoritism toward groups that benefited from the tariff policy.").

Indeed, independent agencies have played an important role in the nation's history because of their non-partisan, technical expertise. See *Humphrey's Ex'r*, 295 U.S. at 624-626; *In re Aiken Cty.*, 645 F.3d 428, 446 (D.C. Cir. 2011) (Kavanaugh, J., concurring) ("*Humphrey's Executor* is an entrenched Supreme Court precedent, protected by stare decisis."); see also Breger & Edles, *Established by Practice: The Theory and Operation of Independent Federal Agencies*, 52 ADMIN. L. REV. 1111, 1131-1133 (2000) (explaining how the need for administrators with "technical competence," "apolitical expertise," and skill in "scientific management" led to original creation of independent agencies); J. Landis, *The Administrative*

Process 23 (1938) (similar); Woodrow Wilson, *Democracy and Efficiency*, 87 Atlantic Monthly 289, 299 (1901) (describing need for insulation of experts from political influences); *Leachco, Inc.* v. *Consumer Prod. Safety Comm'n*, 103 F.4th 748, 760 (10th Cir. 2024) ("This nation's history indicates that Congress and the President have both long valued a relatively independent agency as a means of addressing specialized disputes with specialized expertise and providing at least a temporal degree of some independence for the agency from short-term political pressures that may not always have been welcome, even by the President.").

The majority believed that deference to Commerce was "appropriate because determinations as to the meaning and scope of antidumping duty orders are matters particularly within the expertise of Commerce and its special competence." App. 24a. But Commerce does not have more specialized expertise than the Commission to determine what the Commission did in its initial material injury investigation or what its determination means. Again, Congress intentionally tasked the Commission, not Commerce, with evaluating material injury to the domestic industry, and then periodically reviewing the continued viability of that determination through the sunset review process. The dissent was thus correct to give greater weight to the Commission's "direct statements." App. 63a.

In brief, if courts simply defer to Commerce, rather than apply their own judgment, on whether the Commission had made the requisite material injury

determination, the dual-agency framework designed by Congress would fall apart. This Court's review is needed.

B. The Majority Erred by Allowing Commerce to Impose Antidumping Duties Without the Requisite Material Injury Determination

Had the majority applied its own judgment to ascertain whether the Commission had made the requisite material injury determination, it would have concluded (as the Court of International Trade and the dissent did) that Commerce's scope ruling did not comply with section 1673's material injury requirement.

1. Giving effect to section 1673's dual requirements, the Federal Circuit has long held that Commerce may not interpret an order in a manner that expands its scope. *Wheatland Tube Co.*, 161 F.3d at 1370; see also *Eckstrom Indus., Inc.* v. *United States*, 254 F.3d 1068, 1072 (Fed. Cir. 2001). In particular, the Federal Circuit has held that the Commission's material injury determination limits Commerce's scope-ruling authority. *Eckstrom*, 254 F.3d at 1075. In other words, since Commerce's authority to impose antidumping duties is statutorily limited to merchandise for which the Commission has made a material injury determination, that limitation necessarily carries over into in any subsequent scope ruling. *Wheatland Tube Co.*, 161 F.3d at 1371. Any other result would "frustrate the purpose" of antidumping law by allowing Commerce "to assess

antidumping duties on products intentionally omitted from the ITC's injury investigation." *Ibid.*

Accordingly, the Federal Circuit has emphasized the importance of reading antidumping duty orders narrowly. For example, in *Eckstrom*, Commerce tried to read the scope of an antidumping duty order broadly based largely on product size. 254 F.3d at 1074-76. The Federal Circuit rejected that analysis. It interpreted the operative language (or "scope language") of the order as a whole, reading the tariff codes as part of the scope language, and noting the limited scope of the Commission's injury determination. *Id.* at 1073-76. The Federal Circuit specifically noted that the Commission had conducted its own investigation based on certain tariff codes, and that the Commission's "injury investigation did not encompass" products falling in those codes. *Id.* at 1075. Since the Commission's material injury determination did not include those products, Commerce could not include them in the antidumping order through a scope ruling. *Ibid.*

The Federal Circuit has further held that Commerce lacks authority to extend an antidumping duty order to merchandise simply because the language of the order does not explicitly exclude it. See *Duferco Steel, Inc.* v. *United States*, 296 F.3d 1087, 1096 (Fed. Cir. 2002) (Commerce "cannot find authority in an order based on the theory that the order does not deny authority"); see also *Arcelormittal Stainless Belg. N.V.* v. *United States*, 694 F.3d 82, 88 (Fed. Cir. 2012) (quoting *Duferco* and stating, "[t]he absence of one thing does not prove the opposite"); *Bell*

Supply Co., LLC v. *United States*, 888 F.3d 1222, 1228 (Fed. Cir. 2018). Simply put, if the Commission did not intentionally evaluate a class of merchandise as part of its material injury determination, an antidumping order cannot lawfully encompass that merchandise.

2. Here, the Thailand Order states that it covers pipes that "are commonly referred to in the industry as 'standard pipe' . . . ." App. 12a. The majority below upheld Commerce's interpretation of that language as including dual-stenciled line pipes principally because the "Thailand Order does not contain any exclusionary language." App. 37a. But reading the Thailand Order as covering any line pipes, whether mono- or dual-stenciled, is not in accordance with section 1673 because the Commission never investigated or evaluated material injury for "that merchandise." 19 U.S.C. 1673(2). As the Court of International Trade observed, the Commission "made no injury determination as to dual-stenciled [pipe] . . . from Thailand," and so antidumping duties "[could not] be imposed on those types of pipes when imported from Thailand" in accordance with section 1673. App. 128a. Therefore, Commerce "unlawfully expanded the scope of its original order." App. 20a, 136a.

In its initial investigation, the Commission evaluated only mono-stenciled standard pipes, because the domestic producers withdrew their case against *all* line pipes, including the two tariff codes that would have included dual-stenciled line pipes. App. 7a-8a. As explained by Judge Chen and the Court of International Trade, the domestic producers' decision to remove *all* line pipe from their petition was

critical, because it means that the Commission never evaluated the impact on the market of importing line pipes, whether mono- or dual-stenciled, from Thailand. App. 57a-58a, 137a.

The point of the Commission's injury investigation is to determine the impact of specific imported goods on an "industry in the United States." 19 U.S.C. 1673(2)(A). While the Commission evaluated the impact of importing standard pipes from Thailand—the specific "merchandise" at issue in that proceeding—it is undisputed that the Commission did not evaluate the impact of importing mono-stenciled line pipe from Thailand. It does not necessarily follow that the Commission analyzed the impact of importing dual-stenciled line pipe simply because it happens to satisfy the less stringent specifications for standard pipe. In fact, the Commission could not have done so, since in 1985 there were no imports from Thailand under the two tariff codes that would have included either mono- or dual-stenciled line pipe. App. 75a, 144a.

Eliminating any doubt as to the scope of its injury determination, in its subsequent sunset reviews, the Commission consistently read the Thailand Order as covering only standard pipe, and explicitly noted that "dual-stenciled pipe" was excluded from the "orders under review," which expressly included the Thailand Order. App. 61a-62a. For example, in its third sunset review, the Commission stated that "dual-stenciled pipe, which for U.S. customs purposes enters as line pipe under a different tariff subheading, is not within

the scope of the orders," without any carve-outs. App. 49a, 62a (citation omitted).

In the most recent sunset review in 2018, the Commission again confirmed that "dual-stenciled pipe, which enters as line pipe under a different subheading of the [tariff schedule] for U.S. customs purposes, is not within the scope of the orders," again without qualification. App. 21a, 62a. The Commission's sunset reviews are compelling because, consistent with section 1673's directive that the "Commission determines" material injury, Congress entrusted only the Commission with the authority to determine whether material injury continues to exist as to the class of merchandise within the scope of the order under review. 19 U.S.C. 1675(c), 1675a(a). As Judge Chen noted, everything that happened in front of the Commission, including the Commission's "direct statements" in its own sunset reviews, leads to the inevitable conclusion that "the Thailand Order excludes dual-stenciled pipes." App. 63a-64a.

Indeed, the conclusion that the Thailand Order only covers standard pipes, and not mono- or dual-stenciled line pipes, reflects common sense. A product that meets higher quality standards, such as mono- or dual-stenciled line pipes, is commonly thought of by reference to the higher quality standard, not any lesser included standards. For example, a luxury car with many extra features necessarily includes the base features as well. Yet, no one would commonly refer to the luxury, fully loaded model by reference to the base model—even if the sticker lists all of the base features.

In short, given that the Commission did not evaluate mono- or dual-stenciled line pipes from Thailand in its original material injury investigation, and later explicitly stated that dual-stenciled line pipes were excluded from the Thailand Order, a new material injury investigation would need to be conducted by the Commission to ensure that the impact of dual-stenciled line pipe now being imported from Thailand has been properly evaluated under section 1673. By imposing antidumping duties on dual-stenciled line pipes, Commerce exceeded its authority under section 1673 and its scope ruling is therefore unlawful. This Court's review is needed to correct the Federal Circuit's erroneous contrary conclusion.

II. The Federal Circuit's Decision Has Significant International and Domestic Implications

The Federal Circuit's error has significant legal and practical consequences both internationally and domestically, further justifying this Court's review.

1. The decision below implicates the United States' treaty obligations under the Antidumping Agreement. This international treaty expressly requires a finding of injury to a domestic industry before a contracting party may impose antidumping duties. See Antidumping Agreement, Art. 3.5. Section 1673's injury requirement is intended to comply with this international obligation. S. REP. NO. 96-249 (1979) (explaining that the antidumping measures in section 1673 "elaborate and supplement a substantial body of

rules embodied in or developed under the GATT"). Indeed, the Trade Agreements Act of 1979, which represents current U.S. antidumping law, was enacted specifically to align U.S. trade law with international trade law. H.R. REP. NO. 96-317 (1979) ("[T]he Trade Agreements Act of 1979 encompasses those changes to the current [] antidumping laws necessary or appropriate to the implementation of the international agreements on th[is] subject.").

Under this Court's long-standing precedent, U.S. courts should endeavor to interpret statutes in a manner consistent with the United States' international obligations. *Murray* v. *The Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64 (1804). As Chief Justice Marshall stated in *Charming Betsy*, "an act of Congress ought never to be construed to violate the laws of nations if any other possible construction remains." *Id.* at 118; see also *Vimar Seguros y Reaseguros, S.A.* v. *M/V Sky Reefer*, 515 U.S. 528, 539 (1995) ("If the United States is to be able to gain the benefits of international accords and have a role as a trusted partner in multilateral endeavors, its courts should be most cautious before interpreting its domestic legislation in such manner as to violate international agreements.").

By applying section 1673 so as to allow Commerce to impose anti-dumping duties on dual-stenciled line pipes notwithstanding the absence of any affirmative material injury determination with respect to such merchandise, the majority's decision runs afoul of the United States' international obligations under the Antidumping Agreement. Thus, to ensure the United

States remains a trusted trade partner, section 1673 should be read to require a clear and explicit material injury determination with respect to a specific class of merchandise, as the Federal Circuit has required for decades until the decision below. Commerce should not be able to divine authority from silence. There should be an independent judicial determination that section 1673's two distinct requirements have been met before antidumping duties are imposed, whether in the initial antidumping duty order or in a scope ruling interpreting that order.

2. In addition to these international implications, the Federal Circuit's decision portends broader domestic consequences beyond the orderly administration of U.S. trade law. Other statutes also provide for allocations of authority between executive and independent agencies. For example, the Solid Waste Disposal Act requires the Secretary of the Interior (an executive agency) to obtain the concurrence of the Environmental Protection Agency (an independent agency) before promulgating regulations dealing with disposal of coal mining waste. 42 U.S.C. 6905(c)(2). The Natural Gas Act requires the Federal Energy Regulatory Commission (an independent agency) to obtain the concurrence of the Secretary of Defense (an executive agency) before authorizing liquified natural gas facilities that would affect military training activities. 15 U.S.C. 717. And the Coastal Zone Management Act requires the Secretary of Commerce and the Administrator of the Environmental Protection Agency to "jointly review" state coastal protection plans. 16 U.S.C. 1455b(c)(1).

The agency heads must concur on any decision to approve a state program, and thus each agency has veto power over the other.

The decision below, if left uncorrected, thus threatens not only the United States' position as a reliable trade partner, but also the balance of agency power set forth in section 1673 and other dual-agency statutory frameworks designed by Congress.

CONCLUSION

This petition for certiorari should be granted.

Respectfully submitted,

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